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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~265~~ 27

GLADYS BODDIE, ET AL.,
Appellants,

v.

THE STATE OF CONNECTICUT, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF OF AMICUS CURIAE THE ATTORNEY GENERAL OF MARYLAND

In which the several States shown herein have joined through their respective Attorneys General.

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In which the several States shown herein have joined through their respective Attorneys General.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Attorney General of Maryland files this Brief Amicus Curiae pursuant to Supreme Court Rule 42, to ask this Honorable Court to sustain the decision of the United States District Court for the District of Connecticut in the case of *Boddie, et al. v. the State of Connecticut, et al.*, 286 F. Supp. 968 (1968).

INTEREST OF AMICUS CURIAE

The State of Maryland and the States which have joined herein are seven of the approximately twenty states which have no general in forma pauperis legislation.

The myriad fiscal, economic and administrative difficulties which would arise should this court reverse the three-judge District Court has caused the Attorney General of Maryland and the Attorneys General listed herein to join in support of the sustentation of the decision below.

OPINION BELOW

Judgment of a three-judge United States District Court for the District of Connecticut entered July 17, 1968, denied an injunction which sought to restrain the enforcement of a state statute. The opinion of the three-judge District Court for the District of Connecticut is reported in 286 F. Supp. 968.

JURISDICTION

The jurisdiction of this Court to review by appeal the judgment of the three-judge United States District Court for the District of Connecticut is conferred by 28 U.S.C. 1253. Probable jurisdiction was noted on June 23, 1969.

STATUTORY PROVISION INVOLVED

Sec. 52-259 of the General Statutes of Connecticut as amended by Pub. Act 628, Sec. 3 (Conn. Gen. Stat. Ann., Vol. 25, 1967, Supp., p. 29):

"Sec. 52-259 Court fees.

"There shall be paid to the clerks of the supreme court or the superior court, for entering each civil cause, forty-five dollars, and to the clerks of the court of common pleas for entering each civil cause, thirty dollars. There shall be paid to the clerk of each court,

other than probate courts, by any party who requests a finding of fact by a judge of such court to be used on appeal, the sum of twenty dollars, to be paid at the time the request is filed. Such clerks shall also receive for receiving and filing an assessment of damages by appraisers of land taken for public use or the appointment of a commissioner of the superior court, two dollars; for recording the commission and oath of a notary public or certifying under seal to the official character of any magistrate, two dollars; for certifying under seal in verification of copies of files or records or whenever required by law, two dollars; for making all necessary records and certificates of naturalization, the fees allowed under the provisions of the United States statutes for such services; and for making copies, at the rate of fifty cents a page, except there shall be no charge for one plain or certified copy of a judgment to any party to the action."

QUESTION PRESENTED

Does the requirement of filing fees and costs which is a prerequisite to access to the state courts deny the equal protection of the laws guaranteed by the Fourteenth Amendment to those who are unable to pay such fees and costs?

STATEMENT OF THE CASE

The Attorney General of Maryland adopts the appellee's statement of the case.

ARGUMENT

THE NATURE OF THE RELIEF SOUGHT BY APPELLANTS REQUIRES LEGISLATIVE ACTION AND NOT JUDICIAL LEGISLATION.

The Appellees have well and ably argued the lack of constitutional protection for the rights Appellants allege have been denied them and those arguments need not be repeated here.

The Attorney General of Maryland urges this Court to consider, in their evaluation of any possible extension of the *Griffin* Doctrine (*Griffin v. Illinois*, 351 U.S. 12 (1956)), the myriad fiscal, economic and administrative difficulties inherent in such an extension.

It is but an exercise in simple logic to conclude that the requirement of court entry fees, etc. creates two classes — those who can afford to pay may enter the courtroom but such entrance is foreclosed to those without sufficient funds. We have been thus introduced to the classification by the grace of simple logic but to eliminate the classification by the grace of judicial fiat would be to ignore the mode of introduction.

The change of a logical conclusion without regard to the premises upon which it is based results in an unreasoned conclusion. So it is here, the conclusion must be a reasoned one and its strength must relate directly to its foundation. But who should lay this foundation? Should it be laid with the bricks of sociological awareness alone or with those bricks, and the mortar of legislative flexibility and power? Perhaps the bricks can be laid by one and the mortar forced into the cracks later, by another. The answer again lies in simple logic — the best foundation is of brick and mortar, laid together by the same hand — expert in both.

There is more involved here than just the waiving of court entry fees for those who cannot afford them. It is an exercise in futility to provide for the embarkation of an indigent upon the sea of litigation with neither power of sail or motor, nor guidance by helmsman and compass. Waive the entry fee for the indigent but deny him costly service procedures and an attorney and he is left in the same hopeless plight with only the setting changed.

Recognizing this paradox the American Bar Foundation has stated that "merely eliminating court fees and costs would not be enough to make the courts accessible to the poor. Some system is needed to cover the auxiliary expenses of litigation, such as publication fees, bond premiums, fees of investigators and expert witnesses, and, * * * court stenographers." *Public Provisions for Costs and Expenses of Civil Litigation* (Draft), American Bar Foundation (June 1966, Page 5).

Any justification for enjoining enforcement of an entry fee statute such as Connecticut's could be expanded to require provision of other services denied the poor.

Whatever the technical justification for over-turning lower court decisions, the ramifications will be monumental, and the practical effect would be to order legislative appropriation of funds, Cf. *Rosado, et al. v. Wyman, et al.*, Nos. 711, 726, 729, Sept. Term 1968, United States Court of Appeals, 2d Circuit, July 16, (1969).

The court below recognized the difficulties inherent in the decision urged by the appellants;

> "Militating against striking down the present fee legislation by judicial fiat is the extreme difficulty of judicial determination of the course the state should be required to follow. Should the relief agencies provide the fees as part of support to the indigent? From what source should such funds be obtained, and how should they be administered? Should the state courts be required to waive court fees for the indigent? The choice of which method is more fitted to the needs and policy of the state is a legislative choice the courts should take on only if necessary. Likewise with related matters. Should the state pay for the indigent other quite essential costs, which are not now provided or paid for by the state for any private litigants, such as process service fees, or service by publication, investigative and legal services?

> The duties to its disadvantaged people of an affluent society, as represented by its public institutions, are being recognized more fully daily. Where the handicaps of poverty have resulted in unequal justice in criminal matters the courts have found in the equal protection clause a source of authority to correct the inequalities and to strike down criminal sanctions imposed on those denied equal protection.
>
> Although with some hesitation, we conclude that the court should not, by resort to the Constitutional guarantees which for 100 years have been considered not to demand such state action, attempt to speed up the amelioration of the lot of the indigent by forcing the state to provide free access to the civil courts without payment of a relatively modest fee. We should rather leave this to correction by the political process through legislative action, which may reach a more satisfactory result more speedily than the presently available machinery of the courts can effectively accomplish."

Boddie, et al. v. State of Connecticut, et al., 286 F. Supp. 968, 973-74 (1968).

The elimination of court entry fees will have the natural effect of increasing litigation, to be set on already overcrowded court calendars. Such a ruling may require expansion of court facilities and additional judicial appointments. In short, judicial legislation, in the form appellants deem here appropriate, without consideration, and indeed without the capability of dealing with, the concomitant state interests, is most inappropriate.

> "In addition to the complexities of developing constitutional standards, there remains the question of whether the courts are the appropriate institution to bring about needed changes. There are two general reasons for courts to move cautiously in imposing duties on the states in this area. First, constitutional decisions have the obvious disadvantage of being rather inflexible, cutting off experimentation, and

imposing a uniformity which might not always be desirable. Second, removing discriminations against the poor usually requires governmental expenditures, and decisions affecting the fisc are ordinarily considered a uniquely legislative responsibility. The legislature, unlike a court, can consider alternative uses for public moneys, and it can better compare the costs and benefits of different techniques for aiding the poor. Furthermore, only the legislature can alleviate poverty by redistributing income through shifting the tax burden. The courts have often wisely deferred to the legislature on all questions relating to the fairness of income distribution, for they have accepted the proposition that such decisions should be made by an institution amenable to political pressures and responsible to the electorate."

Discriminations Against the Poor and the Fourteenth Amendment, 81 Harvard L. Rev. 435, 442 (1967).

The abstention urged is not without precedent. *Ferguson v. Skrupa*, 372 U.S. 726 (1963); *Nelson v. City of New York*, 352 U.S. 103 (1956); *Harvester Company v. The Department of Taxation*, 322 U.S. 435 (1943); *Knowlton v. Moore*, 178 U.S. 41 (1910).

CONCLUSION

For the reasons stated herein and for the reasons set forth in the appellee's brief, the court should affirm the decision of the three-judge District Court which granted appellee's motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Francis B. Burch, Attorney General of Maryland, Amicus Curiae certify that on the 24th day of October, 1969, I served a copy of the foregoing Brief on the appellants and the appellees by mailing air mail, postage prepaid, to the following attorneys of record:

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